

PROHIBITED GANG ACTIVITY

2009 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends the Criminal Code by creating the offense of failure to disperse from loitering in a public place by groups that include gang members.

Highlighted Provisions:

This bill:

- ▶ provides that a peace officer may order a group to disperse if the group includes persons an officer reasonable believes to be gang members and is in an area where loitering of groups that include gang members is prohibited by the local law enforcement agency;
- ▶ requires that the officer warn the group that failure to disperse is subject to arrest;
- ▶ requires municipal and county legislative bodies to designate areas in their jurisdictions where police officers may require groups that include gang members to disperse;
- ▶ provides that failure to disperse upon the order of an officer is a class B misdemeanor, and a subsequent failure to disperse is a class B misdemeanor subject to a fine of \$100;
- ▶ provides that if, after being ordered to disperse, a member of the group loiters again within specified times and at specified places, the person is guilty of a class B misdemeanor and is subject to a fine of \$100;
- ▶ requires that officers receive training to ensure protection of the constitutional right of collective advocacy;
- ▶ requires that officers receive training on identification of gang members and criminal street gangs; and
- ▶ provides definitions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

33 None

34 **Utah Code Sections Affected:**

35 ENACTS:

36 **76-9-901**, Utah Code Annotated 1953

37 **76-9-902**, Utah Code Annotated 1953

38 **76-9-903**, Utah Code Annotated 1953

39 **76-9-904**, Utah Code Annotated 1953

40 **76-9-905**, Utah Code Annotated 1953

41 **76-9-906**, Utah Code Annotated 1953

42 **76-9-907**, Utah Code Annotated 1953

43

44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **76-9-901** is enacted to read:

46 **Part 9. Prohibition of Gang Activity**

47 **76-9-901. Title.**

48 This part is known as "Prohibition of Gang Activity."

49 Section 2. Section **76-9-902** is enacted to read:

50 **76-9-902. Definitions.**

51 As used in this part:

52 (1) "Criminal street gang" means an organization, association in fact, or group of three
53 or more persons, whether operated formally or informally:

54 (a) that is currently in operation;

55 (b) that has as one of its substantial activities the commission of one or more predicate
56 gang crimes;

57 (c) that has, as a group, an identifying name or an identifying sign or symbol, or both;

58 and

59 (d) whose members, acting individually or in concert with other members, engage in or
60 have engaged in a pattern of criminal gang activity.

61 (2) "Gang loitering" means a person remains in one place under circumstances that
62 would cause a reasonable person to believe that the purpose or effect of that behavior is to
63 enable or facilitate a criminal street gang to:

64 (a) establish control over one or more identifiable areas;

65 (b) intimidate others from entering those areas; or

66 (c) conceal illegal activities.

67 (3) "Pattern of criminal gang activity" means committing, attempting to commit,
68 conspiring to commit, or soliciting the commission of two or more predicate gang crimes
69 within five years, if the predicate gang crimes are committed:

70 (a) (i) by two or more persons; or

71 (ii) by an individual at the direction of or in association with a criminal street gang; and

72 (b) with the specific intent to promote, further, or assist in any criminal conduct by
73 members of a criminal street gang.

74 (4) (a) "Predicate gang crime" means any of the following offenses:

75 (i) any criminal violation of:

76 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

77 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

78 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

79 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

80 (ii) Sections 76-5-102 through 76-5-103.5, which address assault offenses;

81 (iii) Title 76, Chapter 5, Part 2, Criminal Homicide;

82 (iv) Sections 76-5-301 through 76-5-304, which address kidnapping and related
83 offenses;

84 (v) any felony offense under Title 76, Chapter 5, Part 4, Sexual Offenses;

85 (vi) Title 76, Chapter 6, Part 1, Property Destruction;

86 (vii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;

87 (viii) Title 76, Chapter 6, Part 3, Robbery;

88 (ix) any felony offense under Title 76, Chapter 6, Part 4, Theft, except Sections
89 76-6-404.5, 76-6-405, 76-6-407, 76-6-408, 76-6-409, 76-6-409.1, 76-6-409.3, 76-6-409.6,
90 76-6-409.7, 76-6-409.8, 76-6-409.9, 76-6-410, and 76-6-410.5;

91 (x) Title 76, Chapter 6, Part 5, Fraud, except Sections 76-6-504, 76-6-505, 76-6-507,
92 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517,
93 76-6-518, and 76-6-520;

94 (xi) Title 76, Chapter 6, Part 11, Identity Fraud Act;

(xii) Title 76, Chapter 8, Part 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

(xiii) Section 76-8-508, which includes tampering with a witness;

(xiv) Section 76-8-508.3, which includes retaliation against a witness or victim;

(xv) Section 76-8-509, which includes extortion or bribery to dismiss a criminal proceeding;

(xvi) Title 76, Chapter 10, Part 3, which addresses explosives;

(xvii) Title 76, Chapter 10, Part 5, Weapons;

(xviii) Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;

(xix) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

(xx) Section 76-10-1801, which addresses communications fraud;

(xxi) Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act;

(xxii) Section 76-10-2002, which addresses burglary of a research facility; and

(xxiii) Title 41, Chapter 1a, Motor Vehicle Act:

(A) Section 41-1a-1313, regarding possession of a motor vehicle without an identification number;

(B) Section 41-1a-1315, regarding false evidence of title and registration;

(C) Section 41-1a-1316, regarding receiving or transferring stolen vehicles;

(D) Section 41-1a-1317, regarding selling or buying a motor vehicle without an identification number; and

(E) Section 41-1a-1318, regarding the fraudulent alteration of an identification number.

(b) "Predicate gang crime" also includes:

(i) any state or federal criminal offense that by its nature involves a substantial risk that physical force may be used against another in the course of committing the offense; and

(ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute any offense in Subsection (4)(a) if committed in this state.

(5) (a) "Public place" means any location or structure to which the public or a substantial group of the public has access, and includes:

(i) a sidewalk, street, or highway;

(ii) a public park, public recreation facility, or any other area open to the public;

(iii) a shopping mall, sports facility, stadium, arena, theater, movie house, or playhouse, or the parking lot or structure adjacent any of these; and

(iv) the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and businesses.

(b) "Public place" includes the lobbies, hallways, elevators, restaurants and other dining areas, and restrooms of any of the locations or structures under Subsection (5)(a).

Section 3. Section **76-9-903** is enacted to read:

76-9-903. Gang loitering -- Failure to disperse -- Penalties.

(1) When a law enforcement officer observes a person whom the officer reasonably believes to be a member of a criminal street gang engaging in gang loitering in the presence of one or more other persons in any public place where gang loitering is prohibited under Section 76-9-905, the police officer shall:

(a) inform all the persons that they are within an area in which loitering by a group containing one or more criminal street gang members is prohibited;

(b) order all the persons in the group to disperse and remove themselves from within sight and hearing of the location where the officer issues the order to disperse; and

(c) inform the persons that any person in the group will be subject to being charged with a criminal offense and will also be subject to arrest if the person fails to promptly obey the order to disperse.

(2) The officer under Subsection (1) shall also advise the persons the officer is directing to disperse that each of the persons directed to disperse is subject to being charged with a criminal offense and will also be subject to arrest if the person is again, within eight hours after the current order to disperse is made:

(a) present in a public place with a group that includes one or more persons a peace officer reasonably believes to be a member of a criminal street gang; and

(b) within sight or hearing of the location where the law enforcement officer is currently issuing the order to disperse.

Section 4. Section **76-9-904** is enacted to read:

76-9-904. Failure to disperse -- Penalties.

(1) (a) Failure to comply with an order issued under Subsection 76-9-903(1)(b) to

157 disperse is a class B misdemeanor of failure to disperse.

158 (b) Any second and subsequent violation of Subsection (1)(a) is a class B misdemeanor
159 of failure to disperse and is subject to a fine of not less than \$100, unless the court finds
160 mitigating circumstances justifying a lesser punishment and makes that finding a part of the
161 court record.

162 (2) (a) A person is guilty of a class B misdemeanor of subsequent failure to disperse
163 who:

164 (i) is present in a public place with or as part of a group of two or more persons, and
165 that group includes one or more persons a peace officer reasonably believes to be a member of
166 a criminal street gang; and

167 (ii) is within sight or hearing of a location where a law enforcement officer issued an
168 order to the person to disperse under Section 76-9-903 within the prior eight hours.

169 (b) A violation of Subsection (2)(a) is subject to a fine of not less than \$100, unless the
170 court finds mitigating circumstances justifying a lesser punishment and makes that finding a
171 part of the court record.

172 Section 5. Section **76-9-905** is enacted to read:

173 **76-9-905. Designation of areas where orders to disperse are authorized and gang**
174 **loitering is prohibited.**

175 (1) Municipal and county legislative bodies shall, within their respective jurisdictions,
176 designate the areas within their jurisdictions that they have determined are subject to the
177 enforcement of Section 76-9-903 because criminal street gangs have been able to or are
178 attempting to:

179 (a) establish control over these identifiable areas;

180 (b) intimidate others from entering those areas; or

181 (c) conceal illegal activities conducted in those areas.

182 (2) (a) Prior to designating areas subject to enforcement under Section 76-9-903, the
183 legislative body shall consult, as appropriate, with persons who are knowledgeable about the
184 effects of gang activity in areas where Section 76-9-903 may be enforced.

185 (b) Persons consulted under Subsection (2)(a) may include:

186 (i) members of local law enforcement agencies who have training or experience related
187 to criminal street gangs;

(ii) other agency personnel with particular knowledge of gang activities in the proposed designated area;

(iii) elected and appointed officials of the area where the proposed designated area is located; and

(iv) representatives of community-based organizations.

(3) The municipal or county legislative body shall develop and implement procedures for periodic review and update of area designations it makes under Subsection (1).

Section 6. Section **76-9-906** is enacted to read:

76-9-906. Protection of constitutional rights.

(1) This section does not affect or limit any individual's constitutional right to engage in collective advocacy activities that are protected by the Constitution or laws of this state or by the Constitution or laws of the United States.

(2) The sheriff or chief of police shall issue a written directive to all agency employees that provides information on preventing the enforcement of Section 76-9-903 against persons who are engaged in constitutionally protected collective advocacy activities.

Section 7. Section **76-9-907** is enacted to read:

76-9-907. Training for participating law enforcement officers.

The sheriff or chief of police implementing this part shall ensure that all officers charged with enforcing this part successfully complete appropriate training on identification of gang members and criminal street gangs.

Legislative Review Note
as of 10-3-08 11:45 AM

Office of Legislative Research and General Counsel